

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

## HOUSE ENROLLED ACT No. 1075

AN ACT to amend the Indiana Code concerning agriculture and animals.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 15-3-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 5. (a) On or after December 30, 1965, any person, before installing facilities for the distribution of ammonia or ammonia solutions shall, on forms provided by the state chemist, apply for approval of the location of the proposed distribution facilities, in which application he shall state that the installation will be in compliance with all local zoning regulations and building codes.

(b) If the state chemist finds that the location meets the requirements of this chapter and the rules and regulations promulgated hereunder, he shall issue written approval of the location within thirty (30) days after receipt of the application. If the state chemist finds the location does not meet the requirements of this chapter and the rules and regulations promulgated thereunder, he shall issue written disapproval of the location within thirty (30) days after receipt of the application.

(c) Distribution facilities installed prior to December 30, 1965, shall be exempt from the requirements for location approval. Not later than February 28, 1966, the owner or operator of each distribution facility existing prior to December 30, 1965, shall report in writing the location thereof to the state chemist.

**(d) A public way shall not be placed closer to an existing distribution facility than the distance required by rules adopted**



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under this chapter for a distribution facility to be placed near a public way.

SECTION 2. IC 15-3-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 3. ~~As used in~~ **The following definitions apply throughout** this chapter:

- (1) "Fertilizer material" means any substance containing nitrogen, phosphate, potash, or any recognized plant ~~food element or compound which~~ **nutrient that** is used ~~primarily~~ for its plant ~~food~~ **nutrient** content ~~or for compounding mixed fertilizers, except and that is designed to have value in promoting plant growth. The term includes~~ unmanipulated animal and vegetable manures.
- (2) "Mixed fertilizer" means any combination or mixture of fertilizer materials designed for use or claimed to have value in promoting plant growth.
- (3) "Commercial fertilizer" includes mixed fertilizer or fertilizer materials, except nonprocessed ~~barnyard~~ manure, marl, lime, wood ashes, and plaster.
- (4) "Brand" means a term, design, or trademark used in connection with one (1) or several grades of fertilizer.
- (5) "Grade" means the minimum percentage of total nitrogen, available phosphate ( $P_2O_5$ ), and soluble potash ( $K_2O$ ) stated in the order given in this definition.
- (6) "Official sample" means any sample of commercial fertilizer taken by the state chemist or the state chemist's agent.
- (7) "Ton" means a net weight of two thousand (2,000) pounds avoirdupois.
- (8) "Percent" or "percentage" means the percentage by weight.
- (9) "Person" includes an individual, partnership, association, firm, limited liability company, and corporation.
- (10) "Distributor" means a person who offers for sale, sells, barter, or otherwise supplies commercial fertilizers.
- (11) "Sell" or "sale" includes exchange.
- (12) "Specialty fertilizer" means a fertilizer distributed for nonfarm use.
- (13) "Bulk fertilizer" means a fertilizer distributed in nonpackaged form.
- (14) "Registrant" means a person who registers fertilizer under this chapter.
- (15) "Storage" means storage of bulk fertilizer by a person who manufactures or distributes bulk fertilizer, or stores bulk fertilizer for personal use.
- (16) "Board" means the Indiana fertilizer advisory board.

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(17) "Blender" means a person who is engaged in the business of blending fertilizer materials.

(18) "Blending" means the physical mixing or combining of two (2) or more fertilizer materials, including the mixing, through the simultaneous application of two (2) or more fertilizer materials, to produce a uniform mixture.

(19) "Custom blend" means a fertilizer blended according to specifications provided to a blender in a soil test nutrient recommendation or to meet specific consumer requirements before blending.

(20) "Use" means the process of placing fertilizer to promote plant growth.

SECTION 3. IC 15-3-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 4. (a) Before distribution in Indiana, each brand and grade of commercial fertilizer shall be registered in the name of the person whose name appears on the label. The application for registration shall be submitted to the state chemist on a form furnished by the state chemist and shall be accompanied by a fee of ~~ten~~ **twenty** dollars (~~\$10~~) (**\$20**) for each grade of each brand. Fertilizers sold in packages of twelve (12) pounds or less shall be registered for a fee of ~~forty~~ **fifty** dollars (~~\$40~~) (**\$50**) for each grade of each brand. Upon approval by the state chemist, a copy of the registration shall be furnished to the applicant. All registrations expire on June 30 each year.

(b) In addition to the appropriate filing fee set forth in subsection (a), a late filing fee equal to one hundred percent (100%) of the appropriate filing fee shall be assessed:

(1) for an application to renew the registration of a commercial fertilizer under this section that is received after July 31; or

(2) on a product that must be registered under this section before distribution in Indiana but is found to be in distribution before registration.

(c) The application shall include the following information:

(1) The name and address of the registrant.

(2) The brand and grade.

(3) The guaranteed analysis showing the minimum percentage of plant food claimed in the following order and form:

Total Nitrogen . . . . . percent

Available Phosphate ( $P_2O_5$ ) . . . . . percent

Soluble Potash ( $K_2O$ ) . . . . . percent

When applied to mixed fertilizers, grade shall be given in whole

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numbers only. However, the state chemist may permit fractional numbers to be used for specialty fertilizers or when additional plant food elements or other additives are added. Unacidulated mineral phosphatic materials and basic slag shall be guaranteed as to both total and available phosphate and the degree of fineness. In the case of bone, tankage, and other natural organic phosphate materials, only the total phosphate need be guaranteed. Additional plant food elements or other additives, determinable by chemical methods, may be guaranteed only by permission of the state chemist who shall grant such permission only if the state chemist determines that the granting of such permission would not constitute a misrepresentation and is correct with the advice of the dean of agriculture of Purdue University or the dean's designee. When any such additional plant foods are claimed, they shall be included in the guarantee in the form of the element and shall be subject to inspection and analysis in accordance with the methods that may be prescribed by the state chemist.

~~(b)~~ (d) A distributor is not required to register a brand of commercial fertilizer that is registered under this chapter by another person if the label used by the distributor does not differ in any respect from that used by the registrant.

**(e) A distributor who acts as a blender is not required under subsection (a) to register a custom blend that the distributor produces if the fertilizer materials blended together to produce the custom blend are registered under subsection (a). However, a distributor who acts as a blender shall provide the state chemist with the following information about each custom blend that the distributor produces:**

- (1) The name and address of the distributor.**
- (2) The brand and grade of the custom blend.**
- (3) The guaranteed analysis of the custom blend showing the minimum percentage of plant food claimed in the following order and form:**
  - (A) The percent of total nitrogen.**
  - (B) The percent of available phosphate ( $P_2O_5$ ).**
  - (C) The percent of soluble potash ( $K_2O$ ).**

SECTION 4. IC 15-3-3-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 6. (a) An inspection fee shall be paid to the state chemist for all commercial fertilizers distributed in Indiana to persons who are not registrants or permit holders:

- (1) in bulk; or
  - (2) in packages exceeding twelve (12) pounds.
- (b) The inspection fee shall be charged at the rate of ~~thirty-five~~



**forty-five cents (~~\$0.35~~) (\$0.45) per ton. If a fertilizer tonnage report is required under this chapter, the minimum inspection fee is ten dollars (\$10) semiannually.** Sales or exchanges between importers, manufacturers, distributors, or registrants are exempt from the inspection fee. All fees collected by the state chemist under this chapter shall be paid to the treasurer of Purdue University to be used in meeting all necessary expenses in carrying out this chapter, including the employment of inspectors, chemists, expenses in procuring samples, printing bulletins, giving the results of the work of fertilizer inspection as provided for by this chapter, and for any other expenses of Purdue University agricultural programs authorized by law and in support of the purposes of this chapter. The dean of agriculture shall make to the governor an annual classified report, showing the total receipts and expenditures of all fees received under this chapter.

(c) Each registrant shall apply to the state chemist for a permit to report the tonnage of commercial fertilizer sold and pay the inspection fee of **forty-five cents (~~\$0.35~~) (\$0.45) per ton** on the basis of the report. In making the application, the registrant must agree to the following:

- (1) To keep records that the state chemist requires to indicate accurately the tonnage and kinds of commercial fertilizers sold in Indiana.
- (2) To grant the state chemist permission to examine those records and verify the statement of tonnage.
- (3) To report under oath to the state chemist on forms furnished by the state chemist the tonnage of commercial fertilizer sold during the period covered.

(d) The state chemist may grant the permit if the state chemist determines that such a report of fertilizer will lead to efficient enforcement of this chapter and may revoke the permit at any time if it appears to the state chemist that the registrant is not complying with the terms of the agreement entered into at the time of the issuance of the permit or this chapter. The report of tonnage is due and the inspection fees are payable **quarterly semiannually** on the last day of the month following the end of the ~~quarter~~ **semiannual period**. If the report is not filed and the inspection fee paid by the fifteenth day following the due date or if the report of tonnage be false or if the labeling requirements of this chapter have not been complied with, the state chemist may revoke the permit.

(e) If the inspection fee is unpaid after the fifteen (15) day grace period, a penalty shall be assessed in the amount of **ten fifty dollars (~~\$10~~) (\$50)** or ten percent (10%), whichever is greater, in addition to

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the amount due.

SECTION 5. IC 15-3-3-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 7. (a) It is the duty of the state chemist to sample, inspect, make analysis of, **and** test commercial fertilizers distributed within Indiana, and **to** inspect the storage of bulk fertilizers in Indiana at a time and place and to such an extent as necessary to determine whether the commercial fertilizers and their storage are in compliance with this chapter. The state chemist may enter upon any public or private premises during regular business hours in order to have access to ~~commercial~~ fertilizers **and plans** and records relating to ~~their~~ **the** transportation, storage, ~~and~~ sale, **and use of fertilizers**, subject to this chapter and the rules adopted under this chapter.

(b) The methods of sampling and analysis shall be those adopted by the state chemist from sources such as those of AOAC International. In cases of dispute, AOAC International's methods prevail if such are available.

(c) The state chemist, in determining for administrative purposes whether any commercial fertilizer is deficient in plant foods, shall be guided solely by the official sample obtained and analyzed as provided in subsection (b).

(d) The results of the official analysis of a commercial fertilizer that has been found to be subject to penalty or other legal action shall be forwarded by the state chemist to the registrant at least thirty (30) days before the report is submitted to the purchaser, except that on requested inspections results shall be forwarded to the registrant and purchaser at once. If during that period no adequate evidence to the contrary is made available to the state chemist, the report shall become official. Upon request, the state chemist shall furnish to the registrant a portion of any sample found subject to penalty or other legal action.

SECTION 6. IC 15-3-3-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 9. **(a)** A commercial fertilizer is misbranded if it carries any false or misleading statement upon or attached to the container, or if false or misleading statements concerning its agricultural value are made on the container or in any advertising matter accompanying or associated with the commercial fertilizer. It shall be unlawful to distribute a misbranded commercial fertilizer.

**(b) It is unlawful to distribute an adulterated commercial fertilizer. For purposes of this subsection, a commercial fertilizer is adulterated if:**

**(1) it contains any deleterious or harmful substance in a**

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sufficient amount to render it injurious to beneficial plant life, animals, humans, aquatic life, soil, or water when applied in accordance with directions for use on the label; or

(2) adequate warning statements or directions for use that may be necessary to protect plant life, animals, humans, aquatic life, soil, or water are not shown upon the label.

SECTION 7. IC 15-3-3-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 12. The state chemist may adopt rules under IC 4-22-2 relating to the **use of fertilizer material and the** distribution and storage of bulk commercial fertilizers to implement this chapter, including rules that set forth standards for the storage of bulk fertilizers for the purpose of protecting the waters of the state.

SECTION 8. IC 15-3-3-12.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 12.5. (a) The rules set forth in 355 IAC 2-2 through 355 IAC 2-9, as published in the Indiana Register on April 1, 1991, are effective until the state chemist adopts revisions to the rules.

(b) The state chemist may allow the use of technologies or methods other than those specified in the administrative rules adopted by the state chemist under subsection (a) and section 12 of this chapter, if the technologies or methods provide substantially similar protection to the waters of the state from the release of bulk fertilizer as provided by the rules.

(c) Except as provided in subsection (d), a political subdivision (as defined in IC 36-1-2-13) does not have authority to regulate by ordinance the storage or utilization of fertilizer.

(d) A political subdivision may, by resolution, petition the state chemist for a hearing to allow a waiver to adopt an ordinance because of special circumstances relating to the storage or utilization of fertilizer. If a petition is received, the state chemist shall hold a public hearing to consider allowing the waiver requested. The public hearing must be conducted in an informal manner. IC 4-21.5 does not apply to a public hearing under this section.

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Speaker of the House of Representatives

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President of the Senate

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President Pro Tempore

Approved: \_\_\_\_\_

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Governor of the State of Indiana

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**HEA 1075 — Concur+**

